

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al.,

Defendants.

CIVIL ACTION NO. 04-CV-11136 GAO

AFFIDAVIT OF WAYNE CALLAHAN

I, WAYNE CALLAHAN, under oath, declare as follows:

1. I was previously employed as an accountant at the firm of Leo H. Bonarrigo, CPA for thirteen (13) years, and have over twenty (20) years experience practicing as an accountant and preparing and reviewing financial statements and related documentation. My firm was retained by the defendants Direct Marketing Concepts, Inc. (“DMC”) and ITV Direct, Inc. (“ITV”), located in Beverly, Massachusetts, to serve as their outside accountants. I served as DMC’s and ITV’s outside accountant since its inception in 2001. I am responsible for accounting and financial compliance. I make this affidavit on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.

2. DMC and ITV are separate business entities. They were incorporated several years apart and maintain separate bank accounts and separate accounting systems. They maintain separate general ledgers and file separate tax returns. Direct Fulfillment, LLC is a separate corporation that is not owned by either Donald Barrett or Robert Maihos, but by a third party unrelated to either Barrett or Maihos.

3. Both ITV and DMC have complied in all respects with this Court’s prior orders, maintaining accurate books and records and financial controls. The companies have also continued to grow through this period, and now employ over 350 Massachusetts employees. While the company has grown, the assets of the company would not be sufficient to withstand a

judgment of \$54 million, and such a judgment would effectively shut down the operations of the companies.

4. From 2001 to the present, one of my tasks has been to interact with the company's merchant accounts, which are the banks that process customer credit card purchases. I, along with merchant account manager Shauna Favalora, have been responsible for addressing any issues or concerns, including complaints.

5. In my experience, DMC has had good relationships with its merchant accounts and did not have an excessive number of customer complaints related to unauthorized orders. We have had an excellent chargeback record with our merchant account and customer disputes have been infrequent. Donald Barrett stressed that the relationships with our merchant accounts were critical and we should do whatever necessary to assure that these relationships were maintained on good terms, which meant making sure our customers were satisfied. For that reason, we constantly monitor customer complaints and seek to keep them as low as possible. We also resolve customer issues at the company level quickly and efficiently, almost always in the customer's favor, resulting in an extremely low chargeback rate. This has been the case throughout the time I have been associated with the company.

6. On January 22, 2004, Ms. Favalora sent an email to Daniel Pappas, a representative at one of DMC's merchant accounts, which was copied to me. I assisted Ms. Favalora in preparing this correspondence. A true and accurate copy of that email is attached as Exhibit 1. Mr. Pappas was inquiring about a customer complaint regarding the apparent confusion by a customer regarding a one-time purchase versus an autoshop or continuity purchase. In response to his inquiry, we noted preliminarily that "a common occurrence in our industry is for customers to claim that their autoshop order was not authorized because they believe that is the only way they will be refunded for their orders." This is very true, and results in many entries in customer service records reflecting an "unauthorized" autoshop order, when in fact the customer did place the order and confirmed the order. Thus, these records are often not reflective of the actual call that occurred, because DMC customer service is directed to reflect

the content of the customer complaint, regardless of whether it is ultimately proven to be true or untrue.

7. We also explained to Mr. Pappas that DMC always fully discloses, both verbally and in written materials, its return policies with regard to one time and re-supply orders. Under this policy, the customer can cancel at any time and return product within 30 days of the order for a full refund. As noted in my email, DMC also routinely went beyond these written policies, allowing returns beyond the 30-day window. In fact, the current return policy extends a 90-day window for returns.

8. DMC sales representatives have always endeavored to be clear and precise with customers, fully explaining any purchase program and obtaining the customer's consent to the purchase prior to making any charges on the customer's credit card. As discussed in the email, these calls have been recorded since 2004 on the Contract Genie system, as a further step to ensure compliance with the company's policies. These recordings have also borne out our experience, which is that customers will often claim an order is unauthorized in an effort to obtain a refund, or out of "buyer's remorse." The Contract Genie has shown that a claim of an unauthorized order by a customer, when in fact they did confirm the order, is not unusual. Nonetheless, the customer is always entitled to a refund or can cancel at any time.

9. After the present lawsuit was filed, several of our merchant accounts sought increased security for the accounts or took steps to terminate the accounts. I was told that the FTC contacted the merchant accounts directly and informed them of the present lawsuit, and that this may have negatively impacted our relationships with these accounts.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of January, 2006 at Beverly, Massachusetts.

/s/Wayne Callahan
WAYNE CALLAHAN